Ismail bin Mohd Saaid & Anor v DSP Hj Mohd Ali bin Bujang @ Mohd Bujang

HIGH COURT (KUCHING) — SUIT NO 22–4 OF 2006–I/II
RAVINTHRAN JC
28 JULY 2009

Tort — Damages — Assault — Policeman assaulted by his own commanding officer — Commanding officer not acting in any official capacity at time of assault — Commanding officer not acting in oppressive, arbitrary or unconstitutional manner — Whether policeman entitled to compensation for injuries sustained, injured feelings and humiliation — Whether policeman entitled to exemplary damages — Whether policeman entitled to aggravated damages

Tort — Damages — Exemplary damages — Policeman assaulted by his own commanding officer — Commanding officer not acting in any official capacity at time of assault — Commanding officer not acting in oppressive, arbitrary or unconstitutional manner — Whether policeman entitled to compensation for injuries sustained, injured feelings and humiliation — Whether policeman entitled to exemplary damages

Tort — Defamation — Libel — Test for — Meaning of impugned words to ordinary man — Natural and ordinary meaning of such words

Tort — Defamation — Defences — Justification and qualified privilege — Whether established — Whether defendant's action smacked of malice

Tort — Defamation — Qualified privilege — Whether there must be common interest in matter between person issuing communication and person receiving — Whether defence of qualified privilege destroyed by malice

The first plaintiff — a police Lance Corporal and his teacher wife — the second plaintiff were neighbours to the defendant — a police DSP. The defendant was also the first plaintiff's commanding officer at the material time. The defendant and his wife cared for a number of stray cats in the neighbourhood. The first plaintiff, upset at the mess the stray cats were

causing to his house compound, caught the defendant's favourite cat ('the cat') and dumped it away from the neighbourhood. Subsequently, the defendant discovered that the cat, which was pregnant, had been killed by villagers. On 26 April 2002, the first plaintiff was sitting on his motorcycle outside his house when the defendant rushed towards him and assaulted him, whilst accusing him of throwing away the cat. The first plaintiff immediately lodged a police report. He received outpatient medial treatment for minor injuries sustained in the assault. The medical report on the first plaintiff confirmed soft tissue injuries on the first plaintiff's face and abdomen. Several months after the incident, the second plaintiff went to the Disciplinary Unit at the State police headquarters to enquire into the complaint lodged by the first plaintiff. She allegedly said that the police were not taking any action since the defendant was a senior officer. The defendant alleged that the second plaintiff had slandered him to one sub-Inspector Greene when making her enquiry. The defendant thereafter instructed his solicitors to write a letter to the State Director of Education, inter alia, accusing the second plaintiff of conduct unbecoming of a teacher and urging disciplinary action be taken against her. As a result, the second plaintiff was called into the office of her school principal and shown the letter. These facts birthed three claims. The first claim filed by the first plaintiff concerned damages for the assault and battery by the defendant, wherein the first plaintiff sought to recover aggravated and exemplary damages. The second claim was a claim for libel, commenced by the second plaintiff in respect of the letter issued by/or on the instructions of the defendant. The third claim was the defendant's counterclaim for slander against the second plaintiff, concerning slanderous words she allegedly uttered to sub-Inspector Greene.

Held, allowing the first and second plaintiffs' claims with costs and dismissing the defendant's counterclaim:

(1) The first plaintiff had discharged the burden of proof on a balance of probabilities that the defendant had assaulted and battered him. It was extremely unlikely that the first plaintiff would have dared to fabricate evidence and lodge a false police report against his own commanding officer. However, the first plaintiff's claim for exemplary damages was misconceived. He had only suffered minor injuries and therefore pain and suffering would have been minimal. When the defendant assaulted the first plaintiff, the defendant was not acting in his capacity as a police officer. There was no question of the defendant acting in an oppressive, arbitrary or unconstitutional manner. The first plaintiff was entitled to compensation for his injured feelings and humiliation as well. It was not difficult to imagine the helplessness and humiliation suffered by the first plaintiff when he was punched by his own superior officer who was also his neighbour. Aggravated damages not meant to punish the defendant

but to compensate the first plaintiff were in order. The High Court would award RM5,000 as general damages (see paras 3–5); *Rookes v Barnard* [1964] AC 1129 referred; *Roshairee Abd Wahab v Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39 distinguished.

(2) The defendant had clearly caused the letter to be published and it referred to the second plaintiff. The contents of the letter were highly defamatory of the second plaintiff as a person and a teacher. An ordinary man reading the letter would be left with an impression that the second plaintiff was a trouble maker, a busy body and that she was not fit to be a teacher. The defendant's defences of justification and qualified privilege would fail. The second plaintiff's action in complaining to the Disciplinary Unit at the State police headquarters had nothing to do with her occupation as a teacher. Thus, it was completely unjustified to imply in the letter that she was an unfit teacher. It was ridiculous for a senior police officer such as the defendant to consider the second plaintiff's complaint as a threat and a form of harassment. The defendant's action in the instant case clearly smacked of malice which would defeat his defence of qualified privilege (see para 11); *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 referred; *Lewis & Anor v Daily Telegraph Ltd*; *Same v Associated Newspapers Ltd* [1963] 2 All ER 151; [1964] AC 234 followed.

(3) In order to establish a plea of qualified privilege, there must be a common interest in the matter between the person issuing and the person receiving the communication. In the instant case, there was no common interest and reciprocity between the defendant as issuer, and the State Director of Education as receiver. The manner in which the letter was written suggested malice on the part of the defendant – the defendant had wanted to put the second plaintiff in her place and humiliate her in the eyes of her superiors. The defendant's defence of qualified privilege would be defeated by his malicious intention to humiliate and embarrass the second plaintiff (see para 14); *K Surjit Kaur a/p Gean Kartar Singh v Belinda Ghoi Shuk Yee* [2003] 2 MLJ 91 referred; *Watt v Longsdon* [1930] 1 KB 130 referred; *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 followed.

(4) The second plaintiff was not a public figure. Further only a single letter had been sent to the Director of Education. The second plaintiff was not required to prove special damage as the law presumed damage in cases of libel. Maligning a person in his or her profession was not something that could be taken lightly. The defendant in the instant case remained defiant and unapologetic until the very end of the case. In all the circumstances of the case, an award of RM20,000 to the second plaintiff was appropriate (see para 16); *Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (M) Sdn Bhd* [1996] 3 CLJ 590 followed.

(5) Concerning the defendant's counterclaim, assuming that the second plaintiff had uttered the slanderous words complained of, the words did not contain any defamatory imputation against the defendant. The defendant had no reason to complain that the second plaintiff had slandered him in front of sub-Inspector Greene. In any event, on the facts the court was inclined to believe that the second plaintiff had not uttered the words as alleged (see paras 18 & 19).

[Bahasa Malaysia summary

Plaintif pertama, seorang Lans Korporal polis dan isterinya, seorang guru, plaintif kedua merupakan jiran defendan, seorang DSP polis. Defendan juga merupakan pegawai pemerintah plaintif pertama pada masa yang material tersebut. Defendan dan isterinya menjaga beberapa ekor kucing jalanan di kawasan perumahan tersebut. Plaintif pertama, yang marah disebabkan kekotoran diakibatkan oleh kucing-kucing jalanan tersebut di sekitar kawasan rumahnya, menangkap kucing kesayangan defendan ('kucing tersebut') dan membuangnya jauh dari kawasan perumahan tersebut. Kemudiannya defendan mendapati kucing tersebut, yang sedang mengandung, telah dibunuh oleh orang-orang kampung. Pada 26 April 2002, semasa plaintif pertama sedang duduk di atas motosikalnya di luar rumah defendan meluru ke arahnya dan menyerangnya sambil menuduh plaintif pertama membuang kucing tersebut. Plaintif pertama terus membuat laporan polis. Dia mendapat rawatan pesakit luar untuk kecederaan ringan akibat daripada serangan tersebut. Laporan perubatan plaintif pertama mengesahkan kecederaan pada tisu lembut di muka dan abdomen plaintif pertama. Beberapa bulan selepas kejadian tersebut, plaintif kedua pergi ke Unit Disiplin di ibu pejabat negeri untuk bertanyakan tentang laporan yang telah dibuat oleh plaintif pertama. Dia didakwa telah berkata bahawa pihak polis tidak mengambil apa-apa tindakan kerana defendan merupakan pegawai kanan. Defendan mendakwa bahawa plaintif kedua telah memfitnahnya kepada sub-Inspektor Greene apabila dia membuat pertanyaan tersebut. Defendan kemudiannya mengarahkan peguamnya menulis kepada pengarah pendidikan negeri, antara lain, menuduh plaintif kedua berkelakuan tidak berpadanan sebagai seorang guru dan menggesa tindakan disiplin diambil terhadapnya. Akibatnya, plaintif kedua dipanggil oleh pengetua sekolahnya dan surat tersebut ditunjukkan kepadanya. Fakta-fakta ini mewujudkan tiga tuntutan. Tuntutan pertama difailkan oleh plaintif pertama berkenaan ganti rugi bagi serangan dan hentaman oleh defendan, dan plaintif pertama memohon untuk mendapatkan ganti rugi tambahan dan teladan. Tuntutan kedua merupakan tuntutan untuk fitnah bertulis, yang dimulakan oleh plaintif kedua berkaitan dengan surat yang dikeluarkan oleh/atau atas arahan defendan. Tuntutan ketiga merupakan tuntutan balas defendan atas fitnah lisan terhadap plaintif kedua, berkenaan kata-kata fitnah yang dilafazkan kepada sub-Inspektor Greene.

Diputuskan, membenarkan tuntutan plaintif pertama dan kedua dan menolak tuntutan balas defendan:

(1) Plaintif pertama berjaya membuktikan atas imbangan kebarangkalian bahawa defendan telah menyerang dan menghentamnya. Adalah tidak mungkin bahawa plaintif pertama berani memalsukan keterangan dan membuat laporan polis palsu terhadap pegawai pemerintahnya. Walau bagaimanapun, tuntutan plaintif pertama untuk ganti rugi teladan adalah keterlaluan. Dia hanya mengalami kecederaan ringan dan oleh itu, kesakitan dan penderitaannya hanyalah sedikit. Apabila defendan menyerang plaintif pertama, defendan tidak melakukannya sebagai seorang pegawai polis. Tiada persoalan tentang defendan bertindak zalim, sewenang-wenangnya atau tidak berpelembagaan. Plaintif pertama juga berhak ke atas ganti rugi untuk perasaannya yang terguris dan penghinaan yang diterima. Tidak susah untuk menggambarkan ketidakupayaan dan penghinaan yang dialami oleh plaintif pertama apabila dia ditumbuk oleh pegawai atasannya yang juga merupakan jirannya. Ganti rugi tambahan tersebut bukan bertujuan untuk menghukum defendan tetapi untuk memampas plaintif pertama adalah bertepatan. Mahkamah Tinggi akan memberi award RM5,000 sebagai ganti rugi am (lihat perenggan 3–5); *Rookes v Barnard* [1964] AC 1129 dirujuk; *Roshairee Abd Wahab v Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39 dibeza.

(2) Defendan dengan jelas menyebabkan surat tersebut ditulis dan surat itu merujuk kepada plaintif kedua. Kandungan surat tersebut memfitnah plaintif kedua sebagai seorang individu dan seorang guru. Orang biasa yang membaca surat tersebut akan menganggap plaintif kedua suka membuat kacau, suka menjaga tepi kain orang dan juga bukanlah seorang guru yang baik. Pembelaan defendan atas justifikasi dan perlindungan bersyarat akan gagal. Tindakan plaintif kedua mengadu kepada unit disiplin di ibu pejabat polis tidak bersangkut paut dengan pekerjaannya sebagai seorang guru. Maka, adalah langsung tidak wajar untuk menggambarkan bahawa plaintif kedua tidak layak menjadi guru dalam surat tersebut. Adalah tidak munasabah bagi seorang pegawai kanan polis seperti defendan menganggap aduan plaintif kedua sebagai ugutan dan kacau ganggu. Tindakan defendan dalam kes ini jelas merupakan niat jahat dan akan menggagalkan pembelaanya atas perlindungan bersyarat (lihat perenggan 11); *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 dirujuk; *Lewis & Another v Daily Telegraph Ltd, Same v Associated Newspapers Ltd* [1963] 2 All ER 151; [1964] AC 234 diikut.

(3) Untuk mengukuhkan hujahan perlindungan bersyarat, harus ada kepentingan bersama dalam perkara tersebut antara orang yang membuat dan orang yang menerima komunikasi tersebut. Dalam kes

ini, tiada kepentingan bersama dan kesalingan antara defendan sebagai pembuat, dan pengarah pendidikan negeri, sebagai penerima. Cara surat tersebut ditulis menunjukkan niat jahat di pihak defendan — defendan mahu merendah-rendahkan plaintif kedua dan memalukannya di hadapan pihak atasannya. Pembelaan defendan atas perlindungan bersyarat akan digagalkan dengan niat jahatnya untuk menghina dan memalukan plaintif kedua (lihat perenggan 14); *K Surjit Kaur a/p Gean Kartar Singh v Belinda Ghoi Shuk Yee* [2003] 2 MLJ 91 dirujuk; *Watt v Longsdon* [1930] 1 KB 130 dirujuk; *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 diikut.

(4) Plaintif kedua bukanlah seorang tokoh masyarakat. Malah, hanya sepucuk surat yang telah dihantar kepada pengarah pendidikan. Plaintif kedua tidak dikehendaki membuktikan ganti rugi khas kerana undang-undang menganggarkan ganti rugi dalam kes fitnah bertulis. Memburuk-burukkan seseorang dalam profesionnya bukanlah sesuatu yang boleh diambil ringan. Defendan dalam kes ini berkeras untuk ingkar dan tidak mahu meminta maaf hinggalah ke akhir kes ini. Dalam kesemua keadaan kes ini, award sebanyak RM20,000 kepada plaintif kedua adalah berpatutan (lihat perenggan 16); *Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590 diikut.

(5) Merujuk kepada tuntutan balas defendan, jika benarlah plaintif kedua telah melafazkan ayat-ayat fitnah yang didakwa, ayat-ayat tersebut tidak mengandungi sebarang tohmahan terhadap defendan. Defendan tidak mempunyai sebab untuk mengadu bahawa plaintif kedua telah memfitnahya di hadapan sub-Inspektor Greene. Walau apa pun, di atas fakta-fakta mahkamah percaya bahawa plaintif kedua tidak melafazkan ayat-ayat seperti yang didakwa (lihat perenggan 18–19).]

Notes

For a case on assault, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) para 154.
For cases on defences, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 308–319.
For cases on exemplary damages, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 198–201.
For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 369–527.
For cases on qualified privilege, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 576–590.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142, HC (folld)
K Surjit Kaur a/p Gean Kartar Singh v Belinda Ghoi Shuk Yee [2003] 2 MLJ 91, HC (refd)

Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (M) Sdn Bhd [1996] 3 CLJ 590, HC (folld)
Lewis & Anor v Daily Telegraph Ltd (No 2) [1964] 2 QB 601, CA (folld)
Rookes v Barnard [1964] AC 1129, HL (refd)
Roshairee Abd Wahab v Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39, HC (distd)
Rubber Improvement Ltd v Daily Telegraph Ltd; Rubber Improvement Ltd v Associated Newspapers Ltd [1963] 2 All ER 151; [1964] AC 234, HL (folld)
Slim v Daily Telegraph Ltd [1968] 2 QB 157, HL (refd)
Watt v Longsdon [1930] 1 KB 130, CA (refd)

Legislation referred to
Defamation Act 1957 s 5

See Chee How (Baru Bian Advocates & Solicitors) for the plaintiff.
Harizan Hamzah (Awang Bujang, Hamzah & Co Advocates) for the defendant.

Ravinthran JC:

INTRODUCTION

[1] This is a sad case of one man's pet being another man's pest. It spawned three separate claims in this civil suit. The first claim is for assault and battery by the first plaintiff against the defendant. The second claim is for libel by the second plaintiff against the defendant. The second plaintiff seeks damages of RM100,000. The third claim is the counterclaim by the defendant against the second plaintiff for slander. The defendant seeks damages of RM1,000,000. The source of the acrimonious dispute between the parties is of all things, a stray cat. It is rather unfortunate that the parties failed to resolve their misunderstanding at an early stage. Instead, the parties who are all government servants resorted to expensive litigation in the High Court.

BRIEF FACTS

[2] The plaintiffs are husband and wife. The first plaintiff is a policeman holding the rank of Lance Corporal. His wife, the second plaintiff, is a teacher. Their neighbour is the defendant in this case. He is also a policeman. However unlike the first plaintiff, he is a senior officer holding the rank of Deputy Superintendent. Besides being the neighbour of the first plaintiff, he was also his superior officer at the material time. The defendant and his wife looked after a number of stray cats in the area. One of the cats was called 'Ketot' by them and apparently it was a favourite of the defendant. They noticed, one day, during feeding time that it was missing. Meanwhile, the plaintiffs had enough with the cats as they were in the habit of messing up their house compound including their living quarters by frequently straying

in as stray cats are wont to. The first plaintiff admitted in court that he caught hold of the then pregnant 'Ketot' and dumped it in a school area away from the neighbourhood. The defendant said that the child of the plaintiffs told him that the first plaintiff was responsible for the disappearance of the cat. A note written by the defendant to the first plaintiff enquiring about the place he dumped 'Ketot' went unanswered. Sadly, the cat was never rescued as according to the defendant it was killed by the villagers in the area where it was abandoned. This is the background to the trouble that brew over a period of few months between the plaintiffs and defendants.

ASSAULT AND BATTERY

[3] The first plaintiff alleged that on 26 April 2002 he was on his motorcycle outside his house when the defendant rushed towards him and attacked him. First he was punched on the face. His helmet fell off the ground. As he bent down to retrieve his helmet, he was punched again on the shoulder. The defendant accused him of throwing away his pet cat ('kucing kesayangan'). According to the first plaintiff, the wife of the defendant interceded on his behalf to restrain her husband from further assaulting him. He took opportunity to ran away. However she took the witness stand and denied witnessing the alleged assault. The first plaintiff immediately lodged a police report at the Gita Police Station. He was treated at the Accident and Emergency Unit of the hospital. The medical report revealed that he suffered soft tissue injury on his face and abdomen. However his injuries were minor and he only received outpatient treatment. The defendant denied attacking the first plaintiff. He said he only approached him to enquire about his cat and he pointed his finger at him. The first plaintiff allegedly pushed his hand. In order to defend himself he pushed the first plaintiff down. After having considered the probabilities of the respective versions, it is my finding that the defendant had attacked the first plaintiff by punching him. From the background facts that I had outlined, the defendant had good reason to be furious with the first plaintiff at the material time. Immediately after the incident, the first plaintiff lodged a police report. The first plaintiff is a policeman and he would know the consequences of lodging a false police report. Furthermore, the defendant is senior police officer and his superior officer. Therefore it is extremely unlikely that he would have dared to fabricate evidence and lodge a false police report against his own commanding officer. The denial of the defendant, which is as follows, simply does not have the ring of truth to it. He would want the court to believe that he pointed a finger at the first plaintiff and in an attempt to defend himself he pushed the first plaintiff. This is what he said in his witness statement:

> During the alleged incident on the 26 April 2002, at or about 2.15pm when I was outside my house intending to go to work, I saw the first plaintiff outside his house and approached him to tell him of my dead cat and in reply thereto the first

plaintiff did say something which make me point my finger at him. Suddenly the first plaintiff pushed my hand and by trying to defend myself I pushed him back.

[4] It does not explain the soft tissue injury that the first plaintiff sustained. As the report was lodged almost immediately, it is highly likely that a false assault report against a senior police officer by a subordinate would have resulted in a prosecution. Nothing of the sort happened. Instead, the parties were called in for counselling and issued an advice note. DW2, the former Head of Police Management Department in Sarawak testified on behalf of the defendant. He said that the inquiry committee did not conclude that the defendant assaulted the first plaintiff. His evidence can be discounted for the following reason. He himself did not sit on the committee. They only reported to him. The second reason is that it is not known what was the standard of proof they applied to the case. In this civil action, the burden on the first plaintiff is only on a balance of probabilities. I find for the reasons given above, the first plaintiff has discharged his burden of proof on a balance of probabilities that the defendant assaulted and battered him.

DAMAGES FOR ASSAULT AND BATTERY

[5] The first plaintiff is claiming RM51 for special damages and unspecified general damages. The special damages were incurred for the medical expenses and report. There is no challenge on this expense. In respect of the injuries, the first plaintiff only suffered minor soft tissue injury which did not require follow up treatment. Therefore pain and suffering except in the immediate aftermath of the attack would have been minimal or non-existent. His counsel urged the court to award aggravated damages and exemplary damages in view of the fact that the defendant was a senior police officer and his superior officer at the material time. I would firstly rule that the claim for exemplary damages is misconceived. When the defendant assaulted the first plaintiff, he was not acting in his capacity as a police officer. He was merely venting spleen for the loss of his pet cat on his neighbour whom he suspected was the culprit. There is no question of him acting in an oppressive, arbitrary or unconstitutional manner (see *Rookes v Barnard* [1964] AC 1129). Counsel for first plaintiff also urged the court to consider the aggravating factor in that the defendant was senior police officer and that his client was a lowly subordinate of his. He cited the case of *Roshairee Abd Wahab v Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39 where RM50,000 was awarded for the assault and battery committed by senior rank of the tortfeasor and the junior rank of the victim, that case can be distinguished in terms of the degree of aggravation that was present. In that case, the plaintiff was a recruit whereas the first defendant held the rank of Major. As the first defendant was in charge of the army orientation programme, the victim was at the complete mercy of the defendant. The victim was subjected to severe physical 'ragging'

to the extent that he lost his hearing in his right ear. As I noted, in this instant case, the first plaintiff did not suffer serious injuries. However, counsel is right to submit that he is entitled to compensation for his injured feelings and humiliation as well. The defendant was his superior officer and that was the probable reason the first plaintiff did not offer any resistance. I take judicial notice that uniformed bodies such as the police force are hierarchical organisations where enlisted men are trained to obey their superiors without question. In the circumstances it is not difficult to imagine helplessness and humiliation suffered by the first plaintiff when he was punched by his own superior who was also his neighbour. Therefore aggravated damages which are not meant to punish the defendant but to compensate the first plaintiff are in order. After having considered all the circumstances of the case, including the provocation given to the defendant and the overreaction of the defendant, I award RM5,000 as general damages.

LIBEL

[6] Months after the above incident, the wife of the first plaintiff went to the disciplinary unit of the Police State Headquarters to enquire into the complaint of her husband against the defendant. She is alleged to have uttered words to the effect that the police are not taking any action because the defendant is a senior officer. Very unfortunately, the defendant overreacted again by instructing his solicitors to write the following letter to the Director of Education:

OUR REF: RHC/MA/42/01 (C)

YOUR REF:

DATE: 4th December 2003

Pengarah,

JABATAN PENDIDIKAN NEGERI SARAWAK,

Bangunan Tun Datok Patinggi Tunku Haji Bujang,

Jalan Simpang Tiga,

93604 Kuching, Sarawak.

BY HAND

(ATTN: DR. HAJI ADI BADIOZAMAN TUAH)

Re: COMPLAINT AGAINST PUAN NORAYATI BTE AHMAD

SMK (B) KUCHING HIGH, JALAN MATHIE, KUCHING

We refer to above matter wherein we act for and on behalf of Tuan DSP Haji Mohd Ali B. Sujang @ Mohd Bujang (hereinafter referred to as 'our client').

We learned from our client that Puan Norayati Bte Ahmad (hereinafter referred to as 'Puan Norayati') who is the wife of Encik Ismail bin Mohd Sa'aid (hereinafter referred to as Puan Norayati's husband) have caused unnecessary nuisance and

disturbance by making verbal complaints and accusations to the police officer at Pejabat Tatatertib IPK Sarawak that our client had purposely transferred her husband from Bengkel Komunikasi, IPK, Kuching to BN11, Pasukan Gerak Am (PGA) Batu Kawa, Kuching.

We also learned from our client that Puan Norayati have on numerous occasion harassed and threatened our client in his office with her verbal complaints and accusations.

We also learned from our client that on 21st November, 2003 Puan Norayati had made a remark infront of Sub Inspector Steward Green at Pejabat Tatatertib, IPK, Sarawak that 'since Tuan DSP Haji Ali is an officer, the police will not take any action'.

For record purpose we forward herewith a photocopy of application to transfer from Puan Norayati's husband dated 13th June, 2002 reference RF/100065 which will prove that Puan Norayati's complaints and accusations are baseless and unfounded.

The purpose we are instructed to write to your good office is to request your good office to look into the conduct of Puan Norayati as we believe that her conduct is unbecoming of a teacher/education officer and disciplinary action should be taken against her on the following grounds:

(a) if she believed that her husband is victimized by our client at work (which is denied), the right person to confront or make any complaint against our client is Puan Norayati's husband and not her;

(b) the complaints by Puan Norayati are verbal with all elements of threats and harassment at place of work so as to attract public attention where she could have lodged a written complaint is she is serious about it; and

(c) Puan Norayati is a teacher under the jurisdiction of Education Department is interfering another officer or other department under the jurisdiction of Police Department.

We hope your good office could look into the abovematter to stop the unwanted behavior of threatening and harassing of Puan Norayati against our client.

Thank you

Yours faithfully

REDZUAN HISYAM & CO

ADVOCATES

Sgd.

MUHAMMAD HISYAM BIN ABDULLAH

c.c

Pegawai Pendidikan Bahagian

A Bahagian Kuching,
Lorong 17, Jalan Kapor, Sungai Maong Hilir
93150 Kuching, Sarawak
(Attn: Dr Haji Julaihi Bujang)
B Encls

WHETHER PUBLISHED

C **[7]** During cross-examination, the defendant agreed that he had instructed the said letter to be written. He also said that he did not see the letter after it was written but that was immaterial as he had admitted that he caused it to be published. The director was not called as a witness but the second plaintiff told the court she was called into the office of her school principal D and shown the letter. Therefore there is no question that the letter had been published and that it refers to the second plaintiff.

WHETHER DEFAMATORY

E **[8]** The next question to be considered is whether the letter was defamatory of the second plaintiff. The words employed in the letter irresistibly gave the impression that the second plaintiff is a nuisance and trouble maker. Since there is the allegation that her conduct is unbecoming of a teacher, the clear implication is that she is an unfit teacher. This allegation is particularly F damaging to her reputation as a teacher as the letter was addressed to the Director of Education. As a result she was called in for questioning by the principal of her school although her conduct in championing the case of her husband had nothing to do with her work as a teacher in a school. Counsel for the defendant submitted the intention of the letter was to prompt the G Education Department to start an investigation into the conduct of the second plaintiff. As stated in *Slim v Daily Telegraph Ltd* [1968] 2 QB 157, even the meaning intended to be conveyed is not relevant. What is relevant is whether the publication was defamatory. Lord Diplock said as follows in the following words:

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> What is the natural and ordinary meaning of words for the purpose of the law of libel? One can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant.

I **[9]** The oft quoted test of what constitutes defamation was given in the case of *Lewis & Anor v Daily Telegraph Ltd (No 2)* [1964] 2 QB 601, *Same v Associated Newspapers Ltd* [1963] 2 All ER 151; [1964] AC 234, where Lord Reid considered whether the words in question would convey a defamatory meaning to the ordinary man:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man; it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs.

[10] To my mind, the contents of the letter are highly defamatory of her as a person and a teacher. An ordinary man reading the letter would be left with impression that the second plaintiff is trouble maker, a busy body and that she is not fit to be teacher. I shall now consider the defences that were pleaded.

JUSTIFICATION

[11] The defendant pleaded justification and qualified privilege. The justification that was relied on by the defendant is that the second plaintiff created a nuisance by going to the Disciplinary Unit of the Police Headquarters to complain that no action was being taken on her husband's case. Apart from complaining about the fact that her husband's case was not looked into by the police, there is no evidence of harassment and threats on her part against the defendant. In fact it is ridiculous for a senior police officer such as the defendant to consider her complaint as a threat and a form of harassment. In any event, her action in complaining to the Disciplinary Unit had nothing to do with her occupation as a teacher and therefore it was completely unjustified to imply in the letter to the Director of Education that she was an unfit teacher. The defendant's action clearly smacks of malice which would defeat the second defence ie qualified privilege. I shall nonetheless consider whether this defence was available to the defendant.

QUALIFIED PRIVILEGE

[12] One of the essentials to be established for the plea of qualified privilege is that there must be a common interest in the matter between the person issuing and the person receiving the communication (see *K Surjit Kaur a/p Gean Kartar Singh v Belinda Ghoi Shuk Yee* [2003] 2 MLJ 91 and *Watt v Longsdon* [1930] 1 KB 130, at p 146). In the well known local case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142, the defence of qualified privilege is described as follows:

> A common interest for the purpose of the defence of qualified privilege to an action for libel occurs where the words complained of as defamatory were published in pursuance of an interest or of a duty, legal, social, or moral, to publish them to the person to whom they were published and the person to whom they were published had a corresponding interest or duty to receive them. The reciprocity is essential. The bona fide belief of the defendant that there existed such

A an interest or that he was under such a duty to make the communication is immaterial, for the thing which is relevant to the question whether or not the occasion was privileged is the existence in fact of the duty or interest and not merely the defendant's belief in the existence of the one or the other.

B **[13]** Counsel for the defendant explained the purpose of the letter as follows in his submission:

> It was meant to prompt the Education Department to do an investigation and nothing else. This is certainly within the preamble of qualified privilege. The defendant is a police officer and he was hereby writing to another department
C regarding another officer, a teacher in this case, for the purpose of an internal departmental investigation.

[14] The issuer of the communication here is the defendant. The receiver
D is the Education Department Director. The alleged antics of the second plaintiff to which the defendant has taken exception arose outside of her duty as a teacher. In fact it arose out of her duty as first plaintiff's wife who, rightfully or wrongfully, took umbrage at the perceived unfair treatment meted out to her husband. I therefore fail to see the element of common
E interest and reciprocity between the issuer and receiver of the communication that is essential for the plea of qualified privilege. Would the defendant have written such a letter to the employer of the second plaintiff if she were a cashier in a supermarket? I do not think so as there would be no common interest between the defendant and the supermarket with respect to what the
F second plaintiff allegedly did at the Disciplinary Unit of the Police Headquarters. However, for sake of argument, if the second plaintiff had improperly inflicted corporal punishment on a child of the defendant in her capacity as a teacher, the incident would constitute a matter of mutual concern and interest between the defendant as a parent and the Director of
G Education as the superior officer of the second plaintiff. In any event, the manner the letter was written suggests malice on the part of the defendant. It is as if the defendant wanted to put her in her place and humiliate her in the eyes of her superiors. The ostensible purpose about wanting the Education Department to open an investigation into her conduct appears to
H be an afterthought and an irrelevant consideration. Surely the defendant should know that the Education Department has no business to investigate into the propriety of the conduct of one of its teachers at the Disciplinary Unit of the Police Headquarters. Therefore even if for some reason the defendant could establish qualified privilege, the said defence would be
I defeated by his malicious intention to humiliate and embarrass her.

DAMAGES

[15] Counsel for the plaintiffs pleaded damages of RM100,000 for the

libel. He cited the case of *Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590 where the court restated the factors that should be considered the quantum of damages:

(a) the position and standing of the plaintiffs;

(b) the nature of the libel;

(c) the mode and extent of the publication;

(d) the conduct of the plaintiffs;

(e) the conduct of the defendants from the time of the libel down to the very moment of the verdict, and

(f) the absence or refusal of any retraction or apology.

[16] The second plaintiff is not a public figure like a politician. It can be fairly said that defamation against public figures would cause more hurt. This is because, depending on the medium used to publish the defamatory imputations, more people would learn of what was alleged. In this case, only a single letter was sent to the Director of Education. However, the Education Department reacted to the letter as the second plaintiff was called in for questioning. Because of that, she claimed that others in the teaching community got to know of the contents of the letter. Although she could not prove actual damage, she claimed that she lost out on her promotion because of the letter. However she need not prove special damage. In cases of libel, unlike slander, damage is presumed by the law. However, I note that maligning a person in his or her profession is not something that must be taken lightly. Even in slander cases where proof of special damage is necessary, an exception is made in cases where a person is disparaged in any office, profession, calling, trade or business (see s 5 of the Defamation Act 1957). I had also considered the conduct of the defendant in this case. He remained defiant and unapologetic until the very end of the case. In all the circumstances of the case, I shall award damages in the sum of RM20,000 to the second plaintiff.

SLANDER ACTION BY THE DEFENDANT AGAINST THE SECOND PLAINTIFF

[17] The defendant counterclaimed for slander against the second plaintiff in the sum of RM1,000,000. She is alleged to have slandered him by uttering the following words when she approached sub-Inspector Greene at the Disciplinary Unit of the Police Headquarters to complain about the lack of action on her husband's case:

Kamek mahu bertanya mengenai hal laki kamek yang ditumbuk oleh Tuan Hj Ali di mana kes tidak didakwa ke mahkamah hingga kini. Semua itu adalah kerana Hj orang berpangkat besar dan tidak dapat dituduh dalam hal ini.

Laki kamek juak telah diambil tindakan tatatertib setelah seorang pekerja Hj Ali yang ada cuba memikat kamek dahulu.

Laki kamek yang telah ditransfer ke cawangan lain adalah kerana Hj Ali juga.

Kamek sudah puas dengan sindiran Hj Ali dan ahli keluarganya di mana kami masih ada menyimpan tape itu.

WHETHER DEFAMATORY

[18] The second plaintiff has denied uttering the words of the first paragraph. On the assumption that the words were uttered by the second plaintiff, the first issue is whether the impugned words referred to the defendant and that it was defamatory. The first para implies that the defendant was not charged in court because he was a senior police officer. These words were uttered to sub-Inspector Stewart Greene who worked in the Disciplinary Unit. In my opinion, it is an indictment or accusation against Stewart Greene and the Disciplinary Unit for allegedly favouring the defendant because of his senior rank. There is no suggestion in the impugned words that the defendant himself abused his power as a senior police officer to avoid prosecution for a wrongdoing. Therefore the words in question did not refer to the defendant and even if they did, they are not defamatory of him. The second para refers to the driver of the defendant who allegedly wanted to entice the second plaintiff at one time. It has nothing to do with the defendant and therefore no inference that it defamed him can be drawn. The third paragraph alleges that the defendant was responsible for her husband's transfer to another unit. Again there is nothing defamatory in these words as a superior officer is entitled to recommend a junior to be transferred. The fourth paragraph simply says that the plaintiffs are fed up with the family of the defendant. This is a general expression of annoyance and does not contain any defamatory imputation against the defendant. Even if all the four paras are read together, an ordinary person would not conclude that the defendant had abused his power. The words in question accuse the police authorities of not taking action. This is the very reason the second plaintiff approached sub-Inspector Greene who worked in the Disciplinary Unit. He was responsible for taking action on disciplinary matters and therefore if the second plaintiff complained that police took no action because of the senior rank of the defendant, it is slur on him and his unit. It was plainly ridiculous of him to think that it was the defendant who was being defamed. The defendant therefore has no reason to complain that second plaintiff slandered him in front of sub-Inspector Stewart Greene.

WHETHER THE WORDS WERE UTTERED

[19] The second plaintiff denied uttering the impugned words to sub-Inspector Stewart Greene. She said that she went to see sub-Inspector Stewart Greene because she wanted to inquire about the case of her husband and he was the disciplinary officer. I am inclined to believe that she did not utter the exact words as alleged for the following reasons. Sub-Inspector Stewart Greene said that she came to inquire about her husband's case that was dealt by his department on 21 November 2003. He did not say that he made any note of the words that she allegedly uttered on the same day. Throughout his testimony he referred to the defendant as his superior officer and he gave the impression that he was subservient and loyal to him. He only gave a police statement ('percakapan dalam pemeriksaan') two months later in which he alleged that the second plaintiff accused the police authorities of not taking any action against the defendant because of the defendant's high rank. He did not explain how he could recall the 88 words that the second plaintiff allegedly spoke to him. The most damning evidence was elicited during the cross-examination of the defendant. The defendant told the court that he instructed Stewart Greene to give the statement. During re-examination he denied that he dictated the words of the statement to sub-Inspector Stewart Greene. However one wonders how sub-Inspector Stewart Greene could recall the exact words of the outburst of the second plaintiff after a long lapse of two months when he did not say that he made contemporaneous notes. He could not have verified the four paragraphs of 88 words with anyone because he said during re-examination that nobody was present when the second plaintiff spoke to him. For the above reasons, I disbelieve him. Even if the second plaintiff had uttered those words, my opinion is that the said words are not defamatory of the defendant as they are directed at the disciplinary unit of the police force. In the premises the counterclaim is dismissed with costs.

[20] In conclusion, I awarded RM5,000 for general damages for the assault and battery committed against the first plaintiff, and special damages of RM51. I awarded RM20,000 in general damages in favour of the second plaintiff. I dismissed the counterclaim. As the parties had reached an agreement on costs, I awarded agreed costs of RM10,000 to the plaintiffs.

Plaintiffs' claims allowed with costs and defendant's counterclaim dismissed.

Reported by Andrew Christopher Simon